

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS**

**DANIEL HARO,**

Plaintiff,

**v.**

**MCCARTHY, BURGESS &  
WOLFF,**

Defendant.

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**Civil Action No.:**

**JURY TRIAL DEMANDED**

**COMPLAINT**

DANIEL HARO (“Plaintiff”), by and through his attorneys, KIMMEL & SILVERMAN, P.C., allege the following against MCCARTHY, BURGESS & WOLFF (“Defendant”):

**INTRODUCTION**

1. Plaintiff’s Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (“FDCPA”) and the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”) *et seq.*

**JURISDICTION AND VENUE**

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United

1 States district court without regard to the amount in controversy,” and 28 U.S.C. §  
2 1331, which grants this court original jurisdiction of all civil actions arising under  
3 the laws of the United States.  
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5 3. Defendant conducts business in the State of Texas, and as such,  
6 personal jurisdiction is established.  
7

8 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).  
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### 11 **PARTIES**

12 5. Plaintiff is a natural person who resides in San Antonio, Texas  
13 78250.  
14

15 6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C.  
16 §1692a(3).  
17

18 7. Plaintiff is a “person” as that term is defined by 47 U.S.C. §153(39).  
19

20 8. Defendant is a national debt collection company with headquarters  
21 located at 26000 Cannon Rd., Cleveland, OH 44146.

22 9. Defendant is a “person” as that term is defined by 47 U.S.C.  
23 §153(39).  
24

25 10. At all relevant times, Defendant acted as a “debt collector” within  
26 the meaning of 15 U.S.C. § 1692(a)(6) and Defendant attempted to collect a  
27 “debt” as defined by 15 U.S.C. §1692(a)(5).  
28

1           12. Defendant acted through its agents, employees, officers, members,  
2 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,  
3 representatives, and insurers.  
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7                           **FACTUAL ALLEGATIONS**

8           13. At all pertinent times hereto, Defendant was hired to collect a  
9 consumer debt and attempted to collect that debt from Plaintiff.  
10

11           14. Defendant collects, and attempts to collect, debts incurred, or alleged  
12 to have been incurred, for personal, family, or household purposes on behalf of  
13 creditors using the U.S. Mail, telephone and/or internet.  
14

15           15. The alleged debt arose out of transactions primarily for personal,  
16 family, or household purposes.  
17

18           16. By way of background, beginning in or around August 2017,  
19 Defendant began placing repeated harassing telephone calls to Plaintiff's cellular  
20 telephone regarding an alleged consumer debt.  
21

22           17. In or around August 2017, Plaintiff requested that Defendant stop  
23 calling.  
24

25           18. However, Defendant continued to call Plaintiff continuing through  
26 January 2018.  
27  
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1           25. Defendant violated §§ 1692d and d(5) when it placed repeated  
2 harassing calls to Plaintiff within the one year period preceding the filing of this  
3 Complaint knowing at all times that its calls were unwanted.  
4

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7                           **COUNT II**  
8                           **DEFENDANT VIOLATED THE TCPA**

9           36. Plaintiff incorporates the forgoing paragraphs as though the same  
10 were set forth at length herein.  
11

12           37. Defendant initiated automated calls to Plaintiff using an automatic  
13 telephone dialing system.

14           38. Defendant's calls to Plaintiff were not made for emergency  
15 purposes.  
16

17           39. Defendant's calls to Plaintiff beginning after Plaintiff revoked  
18 consent in or around August 2017 and continuing through January 2018 were not  
19 made with Plaintiff's prior express consent.  
20

21           40. Defendant's acts as described above were done with malicious,  
22 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights  
23 under the law and with the purpose of harassing Plaintiff.  
24

25           41. The acts and/or omissions of Defendant were done unfairly,  
26 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,  
27 lawful right, legal defense, legal justification or legal excuse.  
28

1           42.     As a result of the above violations of the TCPA, Plaintiff has  
2 suffered the losses and damages as set forth above entitling Plaintiff to an award  
3 of statutory, actual and trebles damages.  
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7           WHEREFORE, Plaintiff, DANIEL HARO, respectfully prays for a  
8 judgment as follows:

- 9  
10           a.     All actual damages suffered pursuant to 15 U.S.C.  
11                 §1692k(a)(1);  
12  
13           b.     Statutory damages of \$1,000.00 for the violation of the  
14                 FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);  
15  
16           c.     All attorneys' fees, witness fees, court costs and other  
17                 litigation costs incurred by Plaintiff pursuant to 15 U.S.C. §  
18                 1693k(a)(3);  
19  
20           d.     All reasonable attorneys' fees, witness fees, court costs and  
21                 other litigation costs incurred by Plaintiff pursuant to 15  
22                 U.S.C. § 1693k(a)(3);  
23  
24           e.     Statutory damages of \$500.00 for each violation of the TCPA,  
25                 pursuant to 47 U.S.C. §227(c)(5)(B);  
26  
27           f.     Treble damages of \$1,500.00 per violative telephone call  
28                 pursuant to 47 U.S.C. §227(b)(3);

- 1 g. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3)
- 2
- 3 h. Any other relief deemed appropriate by this Honorable Court.
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- 6

7 RESPECTFULLY SUBMITTED,

8

9 Dated: December 31, 2018

KIMMEL & SILVERMAN, P.C.

10 By: /s/ Amy Bennecoff Ginsburg

11 Amy Bennecoff Ginsburg

12 30 East Butler Pike

13 Ambler, Pennsylvania 19002

14 Phone: (215) 540-8888

15 Facsimile (877) 788-2864

16 Email: [aginsburg@creditlaw.com](mailto:aginsburg@creditlaw.com)

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